

83-1058

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ALEXANDER L. STEVAS,
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In the
Supreme Court of the United States

October Term, 1983

J.W. Hall,
Petitioner

v.

The United States,
Respondent

PETITION FOR A WRIT OF CERTIORARI FROM
FINAL JUDGMENT ENTERED BY THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

~~CONFIDENTIAL~~

JOHN R. HENRY
HENRY AND MOONEY
404 Market Street
Harrisburg, Arkansas 72432

Attorney for Petitioner

QUESTION PRESENTED

That question presented by this case is whether the Honorable Trial Court abused its discretion in allowing testimony of a highly prejudicial nature to be introduced in evidence before the jury in the trial of petitioner. The evidence was allowed under Federal Rules of Evidence 404 B.

Petitioner, a citizen resident, files his petition to this Court to determine whether he was accorded a fair trial as guaranteed to every citizen by Amendments 5 and 6 to the Constitution of the United States.

PARTIES

The caption of the case in this Court contains the names of all parties.

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BRIEF FOR PETITIONER

J.W. Hall, petitioner herein, respectfully requests that this Court issue a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit, entered on September 30, 1983. No motion for rehearing was filed.

REPORTS OF OPINIONS BELOW

On September 30, 1983, a three Judge panel for the Eighth Circuit issued its opinion affirming the judgment of the District Court. The Opinion was not published. The Opinion is reproduced herein as Appendix "A".

JURISDICTIONAL STATEMENT

Title 28 USC Section 1254(1) states that cases in the Court of Appeals may be reviewed by this Court:

By Writ of Certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment 5 to the Constitution of the United States as follows:

No person shall be deprived of life, liberty or property without due process of law.

Amendment 6 to the Constitution of the United States as follows:

In all criminal prosecutions the accused shall enjoy the right to a speedy trial, by an impartial jury.

STATEMENT OF THE CASE

Petitioner is a citizen of the United States and resident of the State of Arkansas who was indicated with violations of 18 U.S.C. Section 2314. Petitioner was tried in the United States District Court for the Eastern District of Arkansas at Little Rock, before a jury. Trial began on Tuesday, March 23, 1983, and ended on March 24, 1983, with the jury returning a verdict of guilty.

Appeal was had to the District Court, Eighth Circuit, with the judgment being affirmed. An unpublished opinion was filed on September 30, 1983. (Appendix "A").

ARGUMENT

Petitioner, J.W. Hall, should be granted a new trial. The trial in the District Court was unfair and does not meet constitutional due process standard.

J.W. Hall was charged with an offense under 18 USC 2314 in that between September 15, 1981, and October 15, 1981, he did transport in interstate commerce and caused to be transported in interstate commerce stolen shoes of a value of more than \$5,000.00.

Hall was tried by a jury and convicted and the conviction was affirmed by the Eighth Circuit Court of Appeals. (Appendix A) At the trial of petitioner, the government, to prove the allegations of the indictment under the authority of *Federal Rules of Evidence 404B*, offered the testimony of one Nick Freeman. Freeman's testimony was of a vague and uncertain nature as to the commission of other crimes. His testimony was such that there was more than a reasonable doubt that the petitioner had engaged in any wrongdoing. The testimony was of such a damaging and prejudicial nature that a cautionary instruction would not suffice to remove the effect of the prejudice.

The admission of evidence under Federal Rules of Evidence 404 rests within the sound discretion of the Court and this exercise of discretion is not to be disturbed except in cases of manifest abuse. In fact, it is an area in which the Trial Judge's discretion is seldom questioned. 1 *Weinstein's Evidence Section 403-01* (1980). However, your petitioner contends that he was denied a constitutionally fair trial by the introduction of the Rule 404 B Evidence introduced herein necessitating review of this Court, and your petitioner would further assert that the case of Rule 404 B Evidence has taken on an over broad application and that there should be an emendation of the rules allowing the use of such evidence to prevent further miscarriages of justice.

Petitioner requests that the issue raised be addressed by this Court after full briefing and oral argument.

CONCLUSION

Petitioner requests that this Court issue a Writ of Certiorari to the Eighth Circuit and after briefing and oral argument, reverse that Court's refusal to grant petitioner a new trial.

Respectfully submitted,

**JOHN R. HENRY
HENRY AND MOONEY
404 Market Street
Harrisburg, Arkansas 72432**

Attorney for Petitioner

CERTIFICATE OF SERVICE

I, John R. Henry, attorney for Petitioner, hereby state that I have at the time of mailing this Petition for Certiorari to the Supreme Court also served the Solicitor General, Department of Justice, Washington, D.C. 20530, and George W. Proctor, United States Attorney, U.S. Post Office and Courthouse, Little Rock, Arkansas 72203, with copies of said Petition. This Certificate of Service is made in compliance with Rule 33 of the United States Supreme Court Rules.

John R. Henry,
Attorney for Petitioner

APPENDIX "A"

NO. 83-1545

United States of America,	*
	*
Appellee,	* On Appeal from the
	* United States District
v.	* Court for the Eastern
	* District of Arkansas
J.W. Hall,	*
	*
Appellant.	*

Submitted: September 26, 1983
Filed: September 30, 1983

Before HEANEY, ROSS, and ARNOLD, Circuit Judges.

PER CURIAM.

J.W. Hall was convicted by a jury of interstate transportation of stolen goods worth \$5,000 or more, in violation of 18 U.S.C. §2314. The District Court ¹ sentenced Hall to 30 months' imprisonment. He appeals, arguing that the District Court erred in admitting testimony regarding other allegedly wrongful acts, and in denying his motion for judgment of acquittal.

We have considered defendant's arguments and hold that they are without merit. The judgment is affirmed. Because the

¹The Hon. George Howard, Jr., United States District Judge for the Eastern and Western Districts of Arkansas.

case raises no question of precedential significance, we direct that our opinion not be published.

Affirmed.

A true copy.

Attest:

By: Robert D. St. Vrain
CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT.

[Not to be published.]